

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

JOSE ABASTA,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIV-10-896-M
	)	
H. A. LEDEZMA, Warden,	)	
	)	
Respondent.	)	

REPORT AND RECOMMENDATION

Petitioner, a federal prisoner appearing pro se, brings this action seeking habeas relief pursuant to 28 U.S.C. §2241. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). On August 20, 2010, the undersigned reviewed the pleadings filed by Petitioner and entered an Order notifying Petitioner that the documents filed on August 17, 2010, were deficient because the motion to proceed *in forma pauperis* was not submitted and/or the \$5 filing fee had not been paid. Petitioner was directed to cure this deficiency on or before September 9, 2010. The Petitioner was further cautioned that the undersigned would recommend that the action be dismissed without prejudice if the Petitioner failed to comply. As of this date, Petitioner has failed to cure the deficiency or pay the filing fee.

Petitioner's lack of interest in complying with the Court's Order combined with the Court's attempt to manage and control its caseload warrant a dismissal of the action without

prejudice. Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980) (*per curiam*), cert. denied, 450 U.S. 984 (1981).

### RECOMMENDATION

In view of the foregoing, the undersigned recommends that the Petition be dismissed without prejudice. The Petitioner is advised of his right to file an objection to the Report and Recommendation with the Clerk of this Court by October 6<sup>th</sup>, 2010, in accordance with 28 U.S.C. §636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10<sup>th</sup> Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10<sup>th</sup> Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 16<sup>th</sup> day of September, 2010.

  
GARY M. PURCELL  
UNITED STATES MAGISTRATE JUDGE